

AMENDED IN SENATE AUGUST 7, 2006

AMENDED IN SENATE JUNE 22, 2006

AMENDED IN ASSEMBLY MAY 31, 2006

AMENDED IN ASSEMBLY MAY 26, 2006

AMENDED IN ASSEMBLY APRIL 6, 2006

AMENDED IN ASSEMBLY MARCH 30, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2987

Introduced by Assembly Members Nunez and Levine
(Principal coauthors: Assembly Members McCarthy and Plescia)

February 24, 2006

~~An act to add Article 3.7 (commencing with Section 53058) to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, An act to add Division 2.5 (commencing with Section 5800) to the Public Utilities Code, and to amend Section 107.7 of the Revenue and Taxation Code, relating to cable and video service.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2987, as amended, Nunez. Cable and video service.

(1) Existing law provides that any city, county, or city and county may authorize by franchise or license the construction and operation of a community antenna television system and prescribe rules and regulations to protect the subscribers. Existing law requires that cable and video service providers comply with specified customer service standards and performance standards.

This bill would *enact the Digital Infrastructure and Video Competition Act of 2006 and would* establish a procedure for the issuance of state franchises for the provision of video service, which would be defined to include cable service and open-video systems, that would be administered by the ~~Secretary of State~~ *Public Utilities Commission*. The ~~Secretary of State~~ *commission* would be the sole franchising authority for state franchises to provide video services. The bill would require any person or corporation ~~who~~ *that* seeks to provide video service in this state to file an application with the ~~Secretary of State~~ *commission* for a state franchise with specified information, signed under penalty of perjury. By creating a new crime, the bill would impose a state-mandated local program.

The bill would provide that cities, counties, cities and counties, or joint powers authorities would receive *state* franchise fees for video services provided within their jurisdictions, based on gross revenues, pursuant to *a specified* ~~procedures~~ *formula*. The bill would also authorize local entities to establish a fee to support the capital costs of public, educational, and governmental access (PEG) channel facilities, in the amount of either 1% of gross revenues or a preexisting fee, whichever is lower.

The bill would also require these local agencies to permit the installation of networks by holders of state franchises and would preclude enforcement of standards by the local agencies. The bill would also prohibit a holder of a state franchise from discriminating against or denying access to service to any group of potential residential subscribers because of their income and would provide that this provision is satisfied if certain conditions are met by holders with 500,000 or more or 500,000 or less telephone customers in California.

The bill would prescribe the extent of the obligation of state franchiseholders to provide PEG channels. The bill would prescribe certain customer service and protection standards and penalties for ~~material breaches~~ *violations* of those standards. The bill would require; a holder, within 24 months after the issuing of a holder's first state franchise, to make a specified report of the extent to which video service is available to potential subscribers and to file the report with the Legislature, the department, the Governor, the Attorney General, and to post it on the holder's Web site. The bill would also require any state franchiseholder employing more than 750 employees in California to make an annual report of specified information to the department.

(2) Existing property tax law specifies the manner in which local tax assessors determine the value of cable television possessory interests that are created in a cable television franchise or license that is granted by a local government.

This bill would specify that this valuation method also applies to possessory interests created in a cable television franchise or license that is granted by the state under the bill.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Article 3.7 (commencing with Section 53058) is~~
2 ~~added to Chapter 1 of Part 1 of Division 2 of Title 5 of the~~
3 ~~Government Code, to read:~~

4
5 ~~Article 3.7. The Digital Infrastructure and Video Competition~~
6 ~~Act of 2006~~

7
8 ~~53058. This act shall be known and may be cited as the~~
9 ~~Digital Infrastructure and Video Competition Act of 2006.~~

10 ~~SECTION 1. Division 2.5 (commencing with Section 5800) is~~
11 ~~added to the Public Utilities Code, to read:~~

12
13 ~~DIVISION 2.5. THE DIGITAL INFRASTRUCTURE AND~~
14 ~~VIDEO COMPETITION ACT OF 2006~~

15
16 ~~5800. This act shall be known and may be cited as the Digital~~
17 ~~Infrastructure and Video Competition Act of 2006.~~

18 ~~53058.1.~~

19 ~~5800.1.~~ (a) The Legislature finds and declares all of the
20 following:

1 (1) Video and cable services provide numerous benefits to all
2 Californians including access to a variety of news, public
3 information, education, and entertainment programming.

4 (2) Increased competition in the cable and video service sector
5 provides consumers with more choice, lowers prices, speeds the
6 deployment of new communication and broadband technologies,
7 creates jobs, and benefits the California economy.

8 (3) To promote competition, the state should establish a
9 state-issued franchise authorization process that allows market
10 participants to use their networks and systems to provide video,
11 voice, and broadband services to all residents of the state.

12 (4) Legislation to develop this new process should adhere to
13 the following principles:

14 (i) Create a fair and level playing field for all market
15 competitors that does not disadvantage or advantage one service
16 provider or technology over another.

17 (ii) Promote the widespread access to the most technologically
18 advanced cable and video services to all California communities
19 in a nondiscriminatory manner regardless of socioeconomic
20 status.

21 (iii) Protect local government revenues and their control of
22 public rights of way.

23 (iv) Require market participants to comply with all applicable
24 consumer protection laws.

25 (v) Complement efforts to increase investment in broadband
26 infrastructure and close the digital divide.

27 (vi) Continue access to and maintenance of the public,
28 education, and government (PEG) channels.

29 (vii) Maintain all existing authority of the California Public
30 Utilities Commission as established in state and federal statutes.

31 *(b) Nothing in this act shall be construed to eliminate or*
32 *reduce a telephone corporation's or video provider's obligations*
33 *under any applicable state or federal environmental protection*
34 *laws. The local entity shall serve as the lead agency for any*
35 *environmental review under this division that may be required*
36 *pursuant to the California Environmental Quality Act (Division*
37 *13 (commencing with Section 21000) of the Public Resources*
38 *Code).*

39 ~~(b)~~

1 (c) Telephone corporations providing video service pursuant
2 to this article shall not subsidize the cost of deploying network
3 that is used to provide video service and other costs necessary to
4 offer video service with revenue derived from the offering of
5 basic telephone services.

6 ~~53058.2.~~

7 5800.2. For purposes of this article, the following words have
8 the following meanings:

9 (a) “Cable operator” means any person or group of persons
10 that either provides cable service over a cable system and
11 directly, or through one or more affiliates, owns a significant
12 interest in a cable system; or that otherwise controls or is
13 responsible for, through any arrangement, the management and
14 operation of a cable system, as set forth in Section 522(5) of Title
15 47 of the United States Code.

16 (b) “Cable service” is defined as the one-way transmission to
17 subscribers of either video programming, or other programming
18 service, and subscriber interaction, if any, that is required for the
19 selection or use of video programming or other programming
20 service, as set forth in Section 522(6) of Title 47 of the United
21 States Code.

22 (c) “Cable system” is defined as set forth in Section 522(7) of
23 Title 47 of the United States Code.

24 ~~(d) “Department” means the Secretary of State.~~

25 ~~(d) “Commission” means the Public Utilities Commission.~~

26 (e) “Franchise” means an initial authorization, or renewal of
27 an authorization, issued by a franchising entity, regardless of
28 whether the authorization is designated as a franchise, permit,
29 license, resolution, contract, certificate, agreement, or otherwise,
30 that authorizes the construction and operation of a cable system
31 in public rights-of-way.

32 ~~(f) “Franchise fee” or “state-issued authorization fee” means~~
33 ~~the rent paid by the video service provider to the local entity in~~
34 ~~which service is being provided for the continued use of streets,~~
35 ~~public facilities, and other public rights-of-way of the local entity~~
36 ~~in order to provide service and is not a tax within the meaning of~~
37 ~~Section 24 of Article XIII of the Constitution. The fee shall be~~
38 ~~determined as specified in Section 53058.4 and other provisions~~
39 ~~of this article, if relevant.~~

1 (f) “Franchise fee” means the fee adopted pursuant to
2 subdivision (o) of Section 5800.3.

3 (g) “Franchising entity” means the city, county, or city and
4 county entitled to require franchises and impose fees on cable
5 operators, as set forth in Section 53066.

6 (h) “Incumbent cable operator” means the cable operator
7 serving the largest number of cable subscribers in a particular
8 city, county, or city and county franchise area on January 1,
9 2007.

10 (i) “Local entity” means any city, county, city and county, or
11 joint powers authority within the state within whose jurisdiction
12 a holder of a state franchise under this article may provide cable
13 service or video service.

14 (j) “Network” means a component of a facility that is wholly
15 or partly physically located within a public right-of-way and that
16 is used to provide video service, cable service, or voice or data
17 services.

18 (k) “Open-video system” or “OVS” means those services set
19 forth in Section 573 of Title 47 of the United States Code.

20 (l) “OVS operator” means any person or group of persons that
21 either provides cable service over an open-video system directly,
22 or through one or more affiliates, owns a significant interest in an
23 open-video system, or that otherwise controls or is responsible
24 for, through any arrangement, the management of an open-video
25 system.

26 (m) “Public right-of-way” means the area along and upon any
27 public road or highway, or along or across any of the waters or
28 lands within the state.

29 (n) “State franchise” means a franchise that is issued pursuant
30 to this article.

31 (o) “Subscriber” means a person who lawfully receives cable
32 service or video service from the holder of a state franchise for a
33 fee.

34 (p) “Video programming” means programming provided by,
35 or generally considered comparable to programming provided
36 by, a television broadcast station, as set forth in Section 522(20)
37 of Title 47 of the United States Code.

38 (q) “Video service” means video programming services, cable
39 service, or OVS service provided through facilities located at
40 least in part in public rights-of-way without regard to delivery

1 technology, including Internet protocol or other technology. This
2 definition does not include (1) any video programming provided
3 by a commercial mobile service provider defined in Section
4 322(d) of Title 47 of the United States Code, or (2) video
5 programming provided via an Internet access service as that term
6 is defined in Section 231(e)(4) of Title 47 of the United States
7 Code, unless the video programming is made available by a
8 video service provider solely to its video service subscribers.

9 (r) "Video service provider" means an entity providing video
10 service. This term does not include an incumbent cable operator.

11 ~~53058.3.~~

12 ~~5800.3.~~ (a) ~~The Secretary of State~~ *Public Utilities*
13 *Commission* is the sole franchising authority for a state franchise
14 to provide video service under this article. Neither the
15 department nor any franchising entity or other local entity of the
16 state may require the holder of a state franchise to obtain a
17 separate franchise or otherwise impose any fee or requirement on
18 any holder of a state franchise except as expressly provided in
19 this article. Sections 53066, 53066.01, 53066.2, and 53066.3 *of*
20 *the Government Code* shall not apply to holders of a state
21 franchise.

22 (b) The application process described in subdivisions (d) and
23 (e) and the authority granted to the department under this section
24 shall not exceed the provisions set forth in this section.

25 (c) Any person or corporation who seeks to provide cable
26 service or video service in this state after January 1, 2007, shall
27 file an application for a state franchise with the department. The
28 department may impose a fee on the applicant that shall not
29 exceed the actual and reasonable costs of processing the
30 application and shall not be levied for general revenue purposes.

31 (d) The application for a state franchise shall be made on a
32 form prescribed by the department and shall include all of the
33 following:

34 (1) A sworn affidavit, signed under penalty of perjury by an
35 officer or another person authorized to bind the applicant, that
36 affirms all of the following:

37 (A) That the applicant has filed or will timely file with the
38 Federal Communications Commission all forms required by the
39 Federal Communications Commission before offering cable
40 service or video service in this state.

1 (B) That the applicant agrees to comply with all federal and
2 state statutes, rules, and regulations, including, but not limited to,
3 the following:

4 (i) A statement that the applicant will not discriminate in the
5 provision of video or cable services as provided in Section
6 ~~53058.7~~ 5800.7.

7 (ii) A statement that the applicant will abide by all applicable
8 consumer protection laws and rules as provided in Section
9 ~~53058.8~~ 5800.8.

10 (iii) A statement that the applicant will remit the fee required
11 by ~~Section 53058.4~~ *subdivision (a) of Section 5800.5* to the local
12 entity.

13 (iv) A statement that the applicant will provide PEG channels
14 as required by ~~Section 53058.5~~ 5800.5.

15 (C) That the applicant agrees to comply with all lawful city,
16 county, or city and county regulations regarding the time, place,
17 and manner of using the public rights-of-way, including, but not
18 limited to, payment of applicable encroachment, permit, and
19 inspection fees.

20 (D) That the applicant will concurrently deliver a copy of the
21 application to any local entity where the applicant will provide
22 service.

23 (2) The applicant's legal name and any name under which the
24 applicant does or will do business in this state.

25 (3) The address and telephone number of the applicant's
26 principal place of business, along with contact information for
27 the person responsible for ongoing communications with the
28 department.

29 (4) The names and titles of the applicant's principal officers.

30 (5) The legal name, address, and telephone number of the
31 applicant's parent company, if any.

32 (6) A description of the service area footprint to be served
33 including the socioeconomic information of all residents within
34 the service area footprint.

35 (7) If the applicant is a telephone corporation, as defined in
36 Section 234 of the Public Utilities Code, a description of the
37 territory in which the company provides telephone service. The
38 description shall include socioeconomic information of all
39 residents within the telephone corporation's service territory.

1 (8) The expected date for the deployment of video service in
2 each of the areas identified in paragraph (6).

3 (9) Adequate assurance that the applicant possesses the
4 financial, legal, and technical qualifications necessary to
5 construct and operate the proposed system and promptly repair
6 any damage to the public right-of-way caused by the applicant.
7 *To accomplish these requirements, the commission may require a*
8 *bond.*

9 (e) (1) The department shall notify an applicant for a state
10 franchise and any affected local entities whether the applicant's
11 affidavit described by subdivision (e) is complete or incomplete
12 before the 30th calendar day after the applicant submits the
13 affidavit.

14 (2) If the department finds the affidavit is complete, it shall
15 issue a state franchise before the 14th calendar day after that
16 finding.

17 (3) If the department finds that the application is incomplete, it
18 shall specify with particularity the items in the application that
19 are incomplete and permit the applicant to amend the application
20 to cure any deficiency. The department shall have 30 calendar
21 days from the date the application is amended to determine its
22 completeness.

23 (4) The failure of the department to notify the applicant of the
24 completeness or incompleteness of the applicant's affidavit
25 before the 44th calendar day after receipt of an affidavit shall be
26 deemed to constitute issuance of the certificate applied for
27 without further action on behalf of the applicant.

28 (f) The state franchise issued by the department shall contain
29 all of the following:

30 (1) A grant of authority to provide video service, in exchange
31 for the franchise fee ~~required in Section 53058.4~~ *adopted under*
32 *subdivision (o)*, in the service area footprint as requested in the
33 application.

34 (2) A grant of authority to use the public rights-of-way in the
35 delivery of video service, subject to the laws of this state.

36 (3) A statement that the grant of authority is subject to lawful
37 operation of the cable service or video service by the applicant or
38 its successor in interest.

1 (g) The state franchise issued by the department may be
2 terminated by the video service provider by submitting notice to
3 the department.

4 (h) Subject to the notice requirements of this article, a state
5 franchise may be transferred to any successor in interest of the
6 holder to which the certificate is originally granted, provided that
7 the transferee first submits all of the information required of the
8 applicant by this section to the department.

9 (i) In connection with, or as a condition of, receiving a state
10 franchise, the department shall require a holder to notify the
11 department and any applicable local entity within 14 business
12 days of any of the following changes involving the holder or the
13 state franchise:

14 (1) Any transaction involving a change in the ownership,
15 operation, control, or corporate organization of the holder,
16 including a merger, an acquisition, or a reorganization.

17 (2) A change in the holder's legal name or the adoption of, or
18 change to, an assumed business name. The holder shall submit to
19 the department a certified copy of either of the following:

20 (A) The amended state franchise.

21 (B) The certificate of assumed business name.

22 (3) A change in the holder's principal business address or in
23 the name of the person authorized to receive notice on behalf of
24 the holder.

25 (4) Any transfer of the state franchise to a successor in interest
26 of the holder. The holder shall identify the successor in interest to
27 which the transfer is made.

28 (5) The termination of any state franchise issued under this
29 article. The holder shall identify both of the following:

30 (A) The number of customers in the service area covered by
31 the state franchise being terminated.

32 (B) The method by which the holder's customers were notified
33 of the termination.

34 (6) A change in one or more of the service areas of this article
35 that would increase or decrease the territory within the service
36 area. The holder shall describe the new boundaries of the affected
37 service areas after the proposed change is made.

38 (j) As a condition of receiving a state franchise, the holder
39 shall notify all applicable local entities that the local entity is
40 included in the holder's service area under the state franchise

1 being issued and that the holder intends to provide video service
2 in the local entity's jurisdiction. The holder shall give the notice
3 required under this subdivision not later than 10 days before the
4 holder begins providing video service in the local entity's
5 jurisdiction.

6 (k) (1) Within 24 months after issuance of the holder's first
7 state franchise, and annually thereafter for eight additional years,
8 the holder shall report the extent to which *Internet access of*
9 video service is available to potential subscribers within the
10 holder's service area, including all of the following:

11 (A) The demographics of the service area.

12 (B) The percentage of homes in the service area that have
13 access to service.

14 (C) The demographics of the portion of the service area that
15 has access to service.

16 (D) The technology used by the holder to provide access to
17 service.

18 (E) Whether the holder is, *or expects to be*, in compliance with
19 the provisions set forth in Section ~~53058.8~~ 5800.8. *If the holder*
20 *does not expect to be in compliance, the holder shall describe its*
21 *plan for achieving compliance.*

22 (F) A brief description of any issues related to providing
23 access to service within the holder's service territory, as provided
24 under this article.

25 (2) The report shall be filed with the Legislature, the
26 department, the Governor, and the Attorney General, and posted
27 on the holder's Web site. The holder shall not be required to
28 report competitively sensitive information.

29 (l) (1) A state issued franchise shall only be valid for 10 years
30 after the date of issuance and the video service provider shall
31 apply for a renewal of the state franchise if it wishes to continue
32 to provide video service in the area covered by the franchise after
33 the expiration of the franchise.

34 (2) The department shall ensure that the process for renewing
35 the franchise complies with this section. The department may not
36 renew the franchise unless the video service provider can show
37 that it is in compliance with all of the requirements of this article
38 and has no outstanding financial obligations to the state or any
39 local entity that are expressly allowed under this article.

1 (m) Any video service provider that currently holds a
2 franchise with a local franchising entity is entitled to seek a state
3 franchise in the area designated in that franchise upon meeting
4 any of the following conditions:

5 (1) The expiration of its local franchise.

6 (2) A mutually agreed upon date set by both the local
7 franchising entity and video service provider to terminate the
8 franchise provided in writing by both parties to the department.

9 (3) (A) When a video service provider that holds a state
10 franchise provides the notice required pursuant to subdivision (j)
11 of Section 5800.3 to a local jurisdiction that it intends to initiate
12 providing video service in 10 days, a video service provider
13 operating under a franchise issued by a local franchising
14 authority may elect to obtain a state franchise to replace its
15 locally issued franchise.

16 (B) The franchise issued by the local franchising entity will
17 terminate when the state franchising authority issues a state
18 franchise for the video service provider that includes the entire
19 service area served by video service provider and the video
20 service provider notifies the local entity that it will begin
21 providing video service in that area under a state franchise.

22 (C) Notwithstanding any rights to the contrary, a video service
23 provider opting into a state franchise under this subdivision shall
24 continue to serve all areas as required by its local franchise
25 agreement existing on January 1, 2007, until that local franchise
26 otherwise would have terminated.

27 ~~(m)~~

28 (n) The department shall develop information guides and other
29 tools to help educate local entities and other interested parties
30 about the various provisions of this article.

31 (o) There is hereby adopted a state franchise fee payable as
32 rent or a toll for the use of the public right-of-way by holders of
33 the state franchise issued pursuant to this article. The amount of
34 the state franchise fee shall be 5 percent of gross revenues, as
35 defined in subdivision (d) of Section 5800.4, or the percentage
36 applied by the local entity to the gross revenue of the incumbent
37 cable operator, whichever is less. If there is no incumbent cable
38 operator or upon the expiration of the incumbent cable
39 operator's franchise, the amount of the state franchise fee shall
40 be 5 percent of gross revenues, as defined in subdivision (d) of

1 *Section 5800.4, unless the local entity adopts an ordinance*
2 *setting the amount of the franchise fee at less than 5 percent. The*
3 *state franchise fee shall apply equally to all video service*
4 *providers in the local entity's jurisdiction.*

5 ~~53058.4. (a) The local entity in which video service is~~
6 ~~provided pursuant to a state franchise may, subject to this article,~~
7 ~~impose by ordinance and receive a franchise fee as compensation~~
8 ~~for use of the public rights-of-way provided by the local entity to~~
9 ~~the holder of a state franchise. The holder of a~~

10 *5800.4. (a) The holder of a state franchise that offers video*
11 *service within the jurisdiction of the local entity shall calculate*
12 *and remit to the local entity a state franchise fee, adopted*
13 *pursuant to subdivision (o) of Section 5800.3, as provided in this*
14 *section. The obligation to remit the state franchise fee to a local*
15 *entity begins immediately upon provision of video service within*
16 *that local entity's jurisdiction. However, the remittance shall not*
17 *be due until the time of the first quarterly payment required under*
18 *subdivision (g) that is at least 180 days after the provision of*
19 *service began. The fee remitted to a city or city and county shall*
20 *be based on gross revenues, as defined in subdivision (d), derived*
21 *from the provision of video service within that jurisdiction. The*
22 *fee remitted to a county shall be based on gross revenues earned*
23 *within the unincorporated area of the county. No fee under this*
24 *section shall become due unless the local entity provides*
25 *documentation to the holder of the state franchise supporting the*
26 *percentage paid by the incumbent cable operator serving the area*
27 *within the local entity's jurisdiction, as provided below. The fee*
28 *shall be calculated as a percentage of the holder's gross revenues,*
29 *as defined in subdivision (d). The fee remitted to the local entity*
30 *pursuant to this section may be used by the local entity for any*
31 *lawful purpose.*

32 (b) The *state franchise fee shall be a percentage of the holder's*
33 *gross revenues, as defined in subdivision (d), as follows:*

34 (1) ~~If there is an incumbent cable operator, the fee shall not be~~
35 ~~more than 5 percent of the holder's gross revenues or the~~
36 ~~percentage applied by the local entity to the gross revenue of the~~
37 ~~incumbent cable operator, whichever is less.~~

38 (2) ~~If there is no incumbent cable operator or upon the~~
39 ~~expiration of the incumbent cable operator's franchise, a local~~
40 ~~entity may, by ordinance, set the percentage applied to the gross~~

1 ~~revenues of all video service providers, provided that the fee~~
2 ~~shall not exceed 5 percent of gross revenues and shall be applied~~
3 ~~equally to all video service providers in the local entity's~~
4 ~~jurisdiction.~~

5 (c) No local entity or any other political subdivision of this
6 state may demand any additional fees or charges or other
7 remuneration of any kind from the holder of a state franchise
8 based solely on its status as a provider of video or cable services
9 other than as set forth in this section and may not demand the use
10 of any other calculation method or definition of gross revenues.
11 However, nothing in this section shall be construed to limit a
12 local entity's ability to impose utility user taxes and other
13 generally applicable taxes, fees, and charges under other
14 applicable provisions of state law that are applied in a
15 nondiscriminatory and competitively neutral manner.

16 (d) For purposes of this section, the term "gross revenues"
17 means all revenue actually received by the holder of a state
18 franchise, ~~as determined in accordance with generally accepted~~
19 ~~accounting principles~~, that is derived from the operation of the
20 holder's network to provide cable or video service within the
21 jurisdiction of the local entity, including all of the following:

22 (1) All charges billed to subscribers for any and all cable
23 service or video service provided by the holder of a state
24 franchise, including all revenue related to programming provided
25 to the subscriber, equipment rentals, late fees, and insufficient
26 fund fees.

27 (2) Any fees imposed on the holder of a state franchise by this
28 section that are passed through to, and paid by, the subscribers.

29 (3) Compensation received by the holder of a state franchise
30 that is derived from the operation of the holder's network to
31 provide cable service or video service with respect to
32 commissions that are paid to the holder of a state franchise as
33 compensation for promotion or exhibition of any products or
34 services on the holder's network, such as a "home shopping" or
35 similar channel, subject to paragraph (4) of subdivision (e).

36 (4) A pro rata portion of all revenue derived by the holder of a
37 state franchise or its affiliates pursuant to compensation
38 arrangements for advertising derived from the operation of the
39 holder's network to provide video service within the jurisdiction
40 of the local entity, subject to paragraph (1) of subdivision (e).

1 The allocation shall be based on the number of subscribers in the
2 local entity divided by the total number of subscribers in relation
3 to the relevant regional or national compensation arrangement.

4 (5) Any amounts received that are recorded as negative
5 expenditure, or as a reduction to expenses.

6 (e) For purposes of this section, the term “gross revenue” set
7 forth in subdivision (d) does not include any of the following:

8 (1) Amounts not actually received, even if billed, such as bad
9 debt; refunds, rebates, or discounts to subscribers or other third
10 parties; or revenue imputed from the provision of cable services
11 or video services for free or at reduced rates to any person as
12 required or allowed by law, including, but not limited to, the
13 provision of these services to public institutions, public schools,
14 governmental agencies, or employees except that forgone
15 revenue chosen not to be received in exchange for trades, barter,
16 services, or other items of value shall be included in gross
17 revenue.

18 (2) Revenues received by any affiliate or any other person in
19 exchange for supplying goods or services used by the holder of a
20 state franchise to provide cable services or video services.
21 However, revenue received by an affiliate of the holder from the
22 affiliate’s provision of cable or video service shall be included in
23 gross revenue as follows:

24 (A) To the extent that treating the revenue as revenue of the
25 affiliate, instead of revenue of the holder, would have the effect
26 of evading the payment of fees that would otherwise be paid to
27 the local entity.

28 (B) The revenue is not otherwise subject to fees to be paid to
29 the local entity.

30 (3) Revenue derived from services classified as noncable
31 services or nonvideo services under federal law, including, but
32 not limited to, revenue derived from telecommunications services
33 and information services, other than cable services or video
34 services, and any other revenues attributed by the holder of a
35 state franchise to noncable services or nonvideo services in
36 accordance with Federal Communications Commission rules,
37 regulations, standards, or orders.

38 (4) Revenue paid by subscribers to “home shopping” or
39 similar networks directly from the sale of merchandise through
40 any home shopping channel offered as part of the cable services

1 or video services. However, commissions or other compensation
2 paid to the holder of a state franchise by “home shopping” or
3 similar networks for the promotion or exhibition products or
4 services shall be included in gross revenue.

5 (5) Revenue from the sale of cable services or video services
6 for resale in which the reseller is required to collect a fee similar
7 to the franchise fee from the reseller’s customers.

8 (6) Amounts billed to, and collected from, subscribers to
9 recover any tax, fee, or surcharge imposed by any governmental
10 entity on the holder of a state franchise, including, but not limited
11 to, sales and use taxes, gross receipts taxes, excise taxes, utility
12 users taxes, public service taxes, communication taxes, and any
13 other fee not imposed by this section.

14 (7) Revenue from the sale of capital assets or surplus
15 equipment not used by the purchaser to receive cable services or
16 video services from the seller of those assets or surplus
17 equipment.

18 (8) Revenue from directory or Internet advertising revenue,
19 including, but not limited to, yellow pages, white pages, banner
20 advertisement, and electronic publishing.

21 (9) Revenue received as reimbursement by programmers of
22 marketing costs incurred by the holder of a state franchise for the
23 introduction of new programming.

24 (10) Security deposits received from subscribers, excluding
25 security deposits applied to the outstanding balance of a
26 subscriber’s account and thereby taken into revenue.

27 (f) For purposes of this section, in the case of a video service
28 that may be bundled or integrated functionally with other
29 services, capabilities, or applications, the *state* franchise fee shall
30 be applied only to the gross revenue, as defined in subdivision
31 (d), attributable to cable service or video service, as reflected on
32 the books and records of the holder kept in the regular course of
33 business in accordance with ~~generally accepted accounting~~
34 ~~principles and~~ Federal Communications Commission or Public
35 Utilities Commission rules, regulations, standards, and orders, as
36 applicable.

37 (g) The *state* franchise fee shall be remitted to the applicable
38 local entity quarterly, within 45 days after the end of the quarter
39 for the preceding calendar quarter. Each payment shall be
40 accompanied by a summary explaining the basis for the

1 calculation of the *state* franchise fee. If the holder does not pay
2 the franchise fee when due, the holder shall pay a late payment
3 charge at a rate per year equal to the highest prime lending rate
4 during the period of delinquency, plus 1 percent. If the holder has
5 overpaid the franchise fee, it may deduct the overpayment from
6 its next quarterly payment.

7 (h) Not more than once annually, a local entity may examine
8 the business records of a holder of a state franchise to the extent
9 reasonably necessary to ensure compensation in accordance with
10 subdivision (a). The holder shall keep all business records
11 reflecting any gross revenues, even if there is a change in
12 ownership, for at least four years after those revenues are
13 recognized by the holder on its books and records. If the
14 examination discloses that the holder has underpaid franchise
15 fees by more than 5 percent during the examination period, the
16 holder shall pay all of the reasonable and actual costs of the
17 examination. If the examination discloses that the holder has not
18 underpaid franchise fees, the local entity shall pay all of the
19 reasonable and actual costs of the examination. In every other
20 instance, each party shall bear its own costs of the examination.
21 Any claims by a local entity that compensation is not in
22 accordance with subdivision (a), and any claims for refunds or
23 other corrections to the remittance of the holder of a state
24 franchise, shall be made within three years and 45 days of the
25 end of the quarter for which compensation is remitted, or three
26 years from the date of the remittance, whichever is later. Either a
27 local entity or the holder may, in the event of a dispute
28 concerning compensation under this section, bring an action in a
29 court of competent jurisdiction.

30 (i) The holder of a state franchise may identify and collect the
31 amount of the *state* franchise fee as a separate line item on the
32 regular bill of each subscriber.

33 (j) The holder of a state franchise under this article who also
34 provides stand-alone, residential, primary line, basic telephone
35 service shall not increase this rate to finance the cost of
36 deploying a network to provide video service.

37 (k) *The holder of a state franchise shall not increase the rate*
38 *for residential, primary line, basic telephone service above the*
39 *rate as of July 1, 2006, until January 1, 2009. The commission*
40 *may permit increases in 2007 and 2008 to reflect increases in*

1 *inflation as shown in the Consumer Price Index for urban*
2 *consumers in the western United States as published by the*
3 *Bureau of Labor Statistics, if approved by the commission. This*
4 *subdivision does not effect the authority of the holder to increase*
5 *rates for basic telephone service that is bundled with other*
6 *services and priced as a bundle.*

7 ~~53058.5.~~

8 5800.5. (a) The holder of a state franchise shall designate a
9 sufficient amount of capacity on its network to allow the
10 provision of the same number of public, educational, and
11 governmental access (PEG) channels, that the incumbent cable
12 operator has activated and provided within the local entity under
13 the terms of any franchise in effect in the local entity as of
14 January 1, 2007. For the purposes of this section, a PEG channel
15 is deemed activated if it is being utilized for PEG programming
16 within the municipality for at least eight hours per day. The
17 holder shall have six months from the date the local entity
18 requests the PEG channels to designate the capacity. However,
19 the six-month period shall be tolled by any period during which
20 the designation or provision of PEG channel capacity is
21 technically infeasible, including any failure or delay of the
22 incumbent cable operator to make adequate interconnection
23 available, as required by this subdivision.

24 (b) The PEG channels shall be for the exclusive use of the
25 local entity or its designee to provide public, educational, and
26 governmental channels. The PEG channels shall be used only for
27 noncommercial purposes. However, advertising or sponsorship
28 recognition may be carried on the channels for the purpose of
29 funding the operation of the channels. The PEG channels shall all
30 be carried on the basic service tier. To the extent feasible, the
31 PEG channels shall not be separated numerically from other
32 channels carried on the basic service tier and the channel
33 numbers for the PEG channels shall be the same channel
34 numbers used by the incumbent cable operator unless prohibited
35 by federal law. After the initial designation of PEG channel
36 numbers, the channel numbers shall not be changed without the
37 agreement of the local entity unless the change is required by
38 federal law. Each channel shall be capable of carrying a National
39 Television System Committee (NTSC) television signal.

1 (c) (1) If no PEG channels are activated and provided within
2 the local entity as of January 1, 2007, a local entity whose
3 jurisdiction lies within the authorized service area of the holder
4 of a state franchise may request the holder to designate not more
5 than a total of three PEG channels.

6 (2) The holder shall have six months from the date of the
7 request to designate the capacity. However, the six-month period
8 shall be tolled by any period during which the designation or
9 provision of PEG channel capacity is technically infeasible,
10 including any failure or delay of the incumbent cable operator to
11 make adequate interconnection available, as required by this
12 subdivision.

13 (d) The holder shall provide an additional PEG channel when
14 the locally produced, nonduplicated programming televised on a
15 given channel exceeds 56 hours per week as measured on a
16 quarterly basis. The additional channel shall not be used for any
17 purpose other than to continue programming additional
18 government, education, or public access television.

19 (e) Any PEG channel provided pursuant to this section that is
20 not utilized by the local entity for at least eight hours per day
21 may no longer be made available to the local entity, and may be
22 programmed at the holder's discretion. At the time that the local
23 entity can certify to the holder a schedule for at least eight hours
24 of daily programming, the holder of the state franchise shall
25 restore the channel or channels for the use of the local entity.

26 (f) The content to be provided over the PEG channel capacity
27 provided pursuant to this section shall be the responsibility of the
28 local entity receiving the benefit of that capacity, and the holder
29 of a state franchise bears only the responsibility for the
30 transmission of that content, subject to technological restraints.

31 (g) The local entity shall ensure that all transmissions, content,
32 or programming to be transmitted by a holder of a state franchise
33 are provided or submitted in a manner or form that is standard in
34 the industry. The holder shall be responsible for any changes in
35 the form of the transmission necessary to make it compatible
36 with the technology or protocol utilized by the holder to deliver
37 services. The provision of those transmissions, content, or
38 programming to the holder of a state franchise shall constitute
39 authorization for the holder to carry those transmissions, content,

1 or programming, including, at the holder's option, beyond the
2 jurisdictional boundaries of that local entity.

3 (h) Where technically feasible, the holder of a state franchise
4 and an incumbent cable operator shall negotiate in good faith to
5 interconnect their networks for the purpose of providing PEG
6 programming. Interconnection may be accomplished by direct
7 cable, microwave link, satellite, or other reasonable method of
8 connection. Holders of a state franchise and incumbent cable
9 operators shall provide interconnection of the PEG channels on
10 reasonable terms and conditions and may not withhold the
11 interconnection. If a holder of a state franchise and an incumbent
12 cable operator cannot reach a mutually acceptable
13 interconnection agreement, the local entity may require the
14 incumbent cable operator to allow the holder to interconnect its
15 network with the incumbent's network at a technically feasible
16 point on the holder's network as identified by the holder. If no
17 technically feasible point for interconnection is available, the
18 holder of a state franchise shall make an interconnection
19 available to the channel originator and shall provide the facilities
20 necessary for the interconnection.

21 (i) A holder of a state franchise shall not be required to
22 interconnect for, or otherwise to transmit, PEG content that is
23 branded with the logo, name, or other identifying marks of
24 another cable operator or video service provider. For purposes of
25 this section, PEG content is not branded if it includes only
26 production credits or other similar information displayed at the
27 conclusion of a program. The local entity may require a cable
28 operator or video service provider to remove its logo, name, or
29 other identifying marks from PEG content that is to be made
30 available through interconnection to another provider of PEG
31 capacity.

32 (j) In addition to any provision for the PEG channels required
33 under subdivisions (a) to (k), inclusive, the holder shall reserve,
34 designate, and activate a channel for carriage of public affairs
35 programming that includes live and recorded coverage of state
36 government and state legislative activities originated by the
37 California Channel and designate and activate a channel for
38 carriage of public affairs programming originated by C-Span.

39 (k) After January 1, 2007, and until the expiration of the
40 incumbent cable operator's franchise, if the incumbent cable

1 operator has existing unsatisfied obligations under the franchise
2 to remit to the local entity any cash payments for the ongoing
3 capital costs of public educational and governmental access
4 channel facilities, the local entity shall divide those cash
5 payments among all cable or video providers as provided in this
6 section. The fee shall be the holder's pro rata per subscriber share
7 of the cash payment required to be paid by the incumbent cable
8 operator to the local entity for the capital costs of PEG channel
9 facilities.

10 (l) In determining the fee on a pro rata per subscriber basis, all
11 cable and video service providers shall report, for the period in
12 question, to the local entity the total number of subscribers
13 served within the local entity's jurisdiction, which shall be
14 treated as confidential by the local entity and shall be used only
15 to derive the per subscriber fee required by this section. The local
16 entity shall then determine the payment due from each provider
17 based on a per subscriber basis for the period by multiplying the
18 unsatisfied cash payments for the ongoing capital costs of PEG
19 channel facilities by a ratio of the reported subscribers of each
20 provider to the total subscribers within the local entity as of the
21 end of the period. The local entity shall notify the respective
22 providers, in writing, of the resulting pro rata amount. After the
23 notice, any fees required by this section shall be remitted to the
24 applicable local entity quarterly, within 45 days after the end of
25 the quarter for the preceding calendar quarter, and may only be
26 used by the local entity as authorized under federal law.

27 (m) If there is no incumbent cable operator, or upon the
28 expiration of the incumbent cable operator's franchise, a local
29 entity may, by ordinance, establish a fee to support the capital
30 costs of PEG channel facilities and to support institutional
31 network facilities. The fee shall not exceed the per subscriber fee
32 paid under subdivision (k), if such a fee was paid, or 1 percent of
33 the holder's gross revenues, as defined in Section ~~53058.4~~
34 ~~5800.4~~, earned in the local entity, whichever is lower. For
35 purposes of administration, the fee shall be deposited in a special
36 fund established by the local entity to be used for purposes
37 allowed under federal law.

38 (n) The following services shall continue to be provided by the
39 incumbent cable operator that was furnishing services pursuant to

1 a franchise until January 1, 2008, or until the term of the
2 franchise expires, whichever is later:

3 (1) PEG production or studio facilities.

4 (2) Institutional network capacity, however defined or referred
5 to in the incumbent cable operator's franchise, but generally
6 referring to a private line data network capacity for use by the
7 local entity for noncommercial purposes.

8 (3) Cable services to community public buildings, such as
9 municipal buildings and public schools.

10 (o) The holder of a state franchise may recover the amount of
11 any fee remitted to a local entity under this section by billing a
12 recovery fee as a separate line item on the regular bill of each
13 subscriber.

14 (p) A court of competent jurisdiction shall have exclusive
15 jurisdiction to enforce any requirement under this section or
16 resolve any dispute regarding the requirements set forth in this
17 section, and no provider may be barred from the provision of
18 service or be required to terminate service as a result of that
19 dispute or enforcement action.

20 ~~53058.6:~~

21 *5800.6.* Holders of state franchises shall comply with the
22 Emergency Alert System requirements of the Federal
23 Communications Commission in order that emergency messages
24 may be distributed over the holder's network.

25 ~~53058.7. (a) The local entity shall allow the holder of a state~~
26 ~~franchise under this article to install, construct, and maintain a~~
27 ~~network within public rights-of-way under the same terms and~~
28 ~~conditions as applicable to telephone corporations, as defined~~
29 ~~under Section 234 of the Public Utilities Code, under applicable~~
30 ~~state and federal law.~~

31 *5800.7. (a) The local entity shall allow the holder of a state*
32 *franchise under this division to install, construct, and maintain a*
33 *network within public rights-of-way under the same time, place,*
34 *and manner as the provisions governing telephone corporations*
35 *under applicable state and federal law, including, but not limited*
36 *to, the provisions of Section 7901.1.*

37 (b) A local entity may not enforce against the holder of a state
38 franchise any rule, regulation, or ordinance that purports to allow
39 the local entity to purchase or force the sale of a network.

1 ~~53058.8.~~

2 5800.8. (a) A cable operator or video service provider that
3 has been granted a state franchise under this article may not
4 discriminate against or deny access to service to any group of
5 potential residential subscribers because of the income of the
6 residents in the local area in which the group resides.

7 (b) Holders with more than 500,000 telephone customers in
8 California satisfy this section if all of the following conditions
9 are met:

10 (1) Within three years after it begins providing video service
11 under this article, at least 25 percent of households with access to
12 the holder's video service are low-income households.

13 (2) Within five years after it begins providing video service
14 under this article, at least 30 percent of the households with
15 access to the holder's video service are low-income households.

16 (c) Holders with less than 500,000 telephone customers in
17 California satisfy this section if any of the following conditions is
18 met:

19 (1) When the holder is a telephone service provider of last
20 resort, as determined by the California Public Utilities
21 Commission, and is offering service within its telephone service
22 area, the holder shall offer video service to all customers within
23 their telephone service area within a reasonable time, as
24 determined by the state franchising authority. However, the state
25 franchising authority shall not require the holder to offer services
26 when the cost to provide service is substantially above the
27 average cost of providing service in that community. If the holder
28 is offering service outside its telephone service area, then no
29 additional requirement applies.

30 (2) When the holder is not a telephone service provider of last
31 resort, the holder offers video service to an entire municipality in
32 a manner and sequence negotiated with that municipality that is
33 predicated on the success of the holder in attracting customers.

34 (3) When the holder is offering video service and there is no
35 other video service being offered, other than direct-to-home
36 satellite service, no additional requirement applies.

37 (d) For holders with more than 500,000 telephone customers
38 in California, either of the following shall apply:

39 (1) If the holder is *predominantly* deploying fiber optic
40 facilities to the customer's premise, the holder shall provide

1 access to its video service to a number of households at least
2 equal to 25 percent of the customer households in the holder's
3 telephone service area within two years after it begins providing
4 video service under this article, and to a number at least equal to
5 40 percent of those households within five years.

6 (2) If the holder is not *predominantly* deploying fiber optic
7 facilities to the customer's premise, the holder shall provide
8 access to its video service to a number of households at least
9 equal to 35 percent of the households in the holder's telephone
10 service area within three years after it begins providing video
11 service under this article, and to a number at least equal to 50
12 percent of these households within five years.

13 ~~A holder shall not be required to meet the 40 percent~~
14 ~~requirement in paragraph (1) or the 50 percent requirement in~~
15 ~~paragraph (2) until two years after at least 30 percent of the~~
16 ~~households with access to the holders video service subscribe to~~
17 ~~it for six consecutive months.~~

18 *If 30 percent of the households with access to the holder's*
19 *video service have not subscribed to the holder's video service*
20 *for six consecutive months within three years after it begins*
21 *providing video service, the holder shall submit validating*
22 *documentation to the commission. If the commission is satisfied*
23 *that the documentation validates the holder's claim, then the*
24 *commission shall permit a delay in meeting the 40-percent*
25 *requirement in paragraph (1) or the 50-percent requirement in*
26 *paragraph (2) until the time that the holder does provide service*
27 *to 30 percent of the households.*

28 (e) (1) After two years, the holder may apply to the state
29 franchising authority for a waiver of the requirements of
30 subdivision (b), (c), or (d). Notice of this application shall also be
31 provided to the telephone customers of the holder, the Secretary
32 of the Senate, and the Chief Clerk of the Assembly.

33 (2) Upon application, the franchising authority shall hold
34 public hearings in the telephone service area of the applicant.

35 (3) In reviewing the failure to satisfy the obligations contained
36 in subdivision (b), (c), or (d), the franchising authority shall
37 ~~consider reasonable technical, economic, and operational factors,~~
38 ~~including, but not limited to, all of the following:~~ *consider*
39 *factors that are beyond the control of the holder, including, but*
40 *not limited to, the following:*

1 (i) The ability of the holder to obtain access to rights-of-way
2 under reasonable terms and conditions.

3 (ii) The degree to which developments or buildings are not
4 subject to competition because of existing exclusive
5 arrangements.

6 (iii) The degree to which developments or buildings are
7 inaccessible using reasonable technical solutions under
8 commercially reasonable terms and conditions.

9 (iv) *Natural disasters*.

10 (4) The franchising authority may grant the waiver only if the
11 holder has made substantial and continuous effort to meet the
12 requirements of subdivision (b), (c), or (d). If a waiver is granted
13 the franchising authority shall establish new requirements.

14 (f) Local governments may bring complaints to the state
15 franchising authority that a holder is not offering video service as
16 required by this article, or the state franchising authority may
17 open an investigation on its own motion. The state franchising
18 authority shall hold public hearings before issuing a decision.

19 (g) If the state franchising authority finds that the holder is in
20 violation of this article, it may, in addition to any other remedies
21 provided by law, impose a fine not to exceed 1 percent of the
22 holder's total monthly gross revenue received from provision of
23 video service in the state each month from the date of the
24 decision until the date that compliance is achieved.

25 (h) If a court finds that the holder of the state franchise is in
26 violation of this section, the holder's state franchise shall
27 immediately terminate and the court shall, in addition to any
28 other remedies provided by law, impose a fine not to exceed 1
29 percent of the holder's total gross revenue of its entire cable and
30 service footprint in the state in the full calendar month
31 immediately prior to the decision.

32 (i) As used in this section, the following definitions shall
33 apply:

34 (1) "Household" means consistent with the United States
35 Census Bureau, as a house, an apartment, a mobile home, a group
36 of rooms, or a single room that is intended for occupancy as
37 separate living quarters. Separate living quarters are those in
38 which the occupants live and eat separately from any other
39 persons in the building and which have direct access from the
40 outside of the building or through a common hall.

(2) “Low income household” means as those residential households located within the holder’s existing telephone service area where the average annual household income is less than \$35,000 based on the United States Census Bureau estimates adjusted annually to reflect rates of change and distribution through January 1, 2007.

(3) “Customer’s household” means as those residential households located within the holder’s existing telephone service area that are customers of the service by which that telephone service area is defined.

~~(4) “Access” means that the holder is capable of providing video service at the household address using any technology that provides two-way broadband capability and comparable video programming, content and functionality regardless of whether any customer has ordered service or whether the owner or landlord or other responsible person has granted access to the household.~~

(4) “Access” means that the holder is capable of providing video service at the household address using any technology, other than direct-to-home satellite service, providing two-way broadband Internet capability and video programming, content, and functionality, regardless of whether any customer has ordered service or whether the owner or landlord or other responsible person has granted access to the household. If more than one technology is utilized, the technologies shall provide equivalent two-way broadband Internet capability and equivalent video programming.

(j) Nothing in this section shall be construed to require a holder to provide video service outside its wireline footprint or to match the existing cable franchise territory of any cable provider.

~~53058.9. (a)~~

5800.9. (a) (1) The holder of a state franchise shall comply with the provisions of Sections 53055, 53055.1, 53055.2, and 53088.2 of the Government Code, and any other customer service standards pertaining to the provision of video service required to be enforced by federal law established by federal law or regulation, adopted by the department pursuant to subdivision (q) of Section 53088.2 of the Government Code, or adopted by subsequent enactment of the Legislature.

1 (2) *The holder of a state franchise shall comply with*
2 *provisions of Section 637.5 of the Penal Code and the privacy*
3 *standards contained in Section 631 of the federal Cable Act (47*
4 *U.S.C. Sec. 551 et. seq.).*

5 (b) The local entity shall enforce all of the customer service
6 and protection standards of this section with respect to
7 complaints received from residents within the local entity's
8 jurisdiction, but it may not adopt or seek to enforce any
9 additional or different customer service or other performance
10 standards under Section 53055.3; *or* subdivision (q), (r), or (s) of
11 Section 53088.2 *of the Government Code*, or any other authority
12 or provision of law.

13 ~~(e) The local entity may, by ordinance, provide a schedule of~~
14 ~~penalties for the material breach by a holder of a state franchise~~
15 ~~of this section. No monetary penalties shall be assessed for a~~
16 ~~material breach if the breach is out of the reasonable control of~~
17 ~~the holder. Further, no monetary penalties may be imposed prior~~
18 ~~to January 1, 2007. Any schedule of monetary penalties adopted~~
19 ~~pursuant to this section shall in no event exceed two hundred~~
20 ~~dollars (\$200) for each day of each material breach, not to exceed~~
21 ~~six hundred dollars (\$600) for each occurrence of material~~
22 ~~breach. However, if a material breach of this section has~~
23 ~~occurred, and the city, county, or city and county has provided~~
24 ~~notice and a fine or penalty has been assessed, and if a~~
25 ~~subsequent material breach of the same nature occurs within 12~~
26 ~~months, the penalties may be increased by the city, county, or~~
27 ~~city and county to a maximum of four hundred dollars (\$400) for~~
28 ~~each day of each material breach, not to exceed one thousand two~~
29 ~~hundred dollars (\$1,200) for each occurrence of the material~~
30 ~~breach. If a third or further material breach of the same nature~~
31 ~~occurs within those same 12 months, and the city, county, or city~~
32 ~~and county has provided notice and a fine or penalty has been~~
33 ~~assessed, the penalties may be increased to a maximum of one~~
34 ~~thousand dollars (\$1,000) for each day of each material breach,~~
35 ~~not to exceed three thousand dollars (\$3,000) for each occurrence~~
36 ~~of the material breach. With respect to video providers subject to~~
37 ~~a franchise or license, any monetary penalties assessed under this~~
38 ~~section shall be reduced dollar for dollar to the extent any~~
39 ~~liquidated damage or penalty provision of a current cable~~
40 ~~television ordinance, franchise contract, or license agreement~~

1 ~~imposes a monetary obligation upon a video provider for the~~
2 ~~same customer service failures, and no other monetary damages~~
3 ~~may be assessed.~~

4 ~~(d) If the local entity adopts a schedule of monetary penalties,~~
5 ~~the following procedures shall be followed:~~

6 ~~(1) The local entity shall give the video provider written notice~~
7 ~~of any alleged material breaches of the consumer service~~
8 ~~standards of this article and allow the video provider at least 30~~
9 ~~days from receipt of the notice to remedy the specified breach.~~

10 ~~(2) A material breach for the purposes of assessing penalties~~
11 ~~shall be deemed to have occurred for each day, following the~~
12 ~~expiration of the period specified in paragraph (1), that any~~
13 ~~material breach has not been remedied by the video provider,~~
14 ~~irrespective of the number of customers affected.~~

15 *(c) The local entity may, by ordinance, provide a schedule of*
16 *penalties for any violation by a holder of a state franchise of this*
17 *section. No monetary penalties shall be assessed for a violation if*
18 *it is out of the reasonable control of the holder. Further, no*
19 *monetary penalties may be imposed prior to January 1, 2007.*
20 *Any schedule of monetary penalties adopted pursuant to this*
21 *section shall in no event exceed five hundred dollars (\$500) for*
22 *each day of each violation, not to exceed one thousand five*
23 *hundred dollars (\$1,500) for each occurrence of a violation.*
24 *However, if a violation of this section has occurred, and the city,*
25 *county, or city and county has provided notice and a fine or*
26 *penalty has been assessed, and if a subsequent violation of the*
27 *same nature occurs within 12 months, the penalties may be*
28 *increased by the city, county, or city and county to a maximum of*
29 *one thousand dollars (\$1,000) for each day of each violation, not*
30 *to exceed three thousand dollars (\$3,000) for each occurrence of*
31 *the violation. If a third or further violation of the same nature*
32 *occurs within those same 12 months, and the city, county, or city*
33 *and county has provided notice and a fine or penalty has been*
34 *assessed, the penalties may be increased to a maximum of two*
35 *thousand five hundred dollars (\$2,500) for each day of each*
36 *violation, not to exceed seven thousand five hundred dollars*
37 *(\$7,500) for each occurrence of the violation. With respect to*
38 *video providers subject to a franchise or license, any monetary*
39 *penalties assessed under this section shall be reduced*
40 *dollar-for-dollar to the extent any liquidated damage or penalty*

1 *provision of a current cable television ordinance, franchise*
2 *contract, or license agreement imposes a monetary obligation*
3 *upon a video provider for the same customer service failures,*
4 *and no other monetary damages may be assessed.*

5 *(d) If the local entity adopts a schedule of monetary penalties,*
6 *the following procedures shall be followed:*

7 *(1) The local entity shall give the video provider written notice*
8 *of any alleged violations of the consumer service standards of*
9 *this division and allow the video provider at least 30 days from*
10 *receipt of the notice to remedy the specified violation.*

11 *(2) A violation for the purposes of assessing penalties shall be*
12 *deemed to have occurred for each day within the jurisdiction of*
13 *each local entity, following the expiration of the period specified*
14 *in paragraph (1), that any violation has not been remedied by the*
15 *video provider, irrespective of the number of customers affected.*

16 *(e) This section shall not preclude a party affected by this*
17 *section from utilizing any judicial remedy available to that party*
18 *without regard to this section. Actions taken by a local legislative*
19 *body, including a franchising authority, pursuant to this section*
20 *shall not be binding upon a court of law. For this purpose, a court*
21 *of law may conduct de novo review of any issues presented.*

22 ~~53058.10.~~

23 *5800.10. (a) The holder of a state franchise shall perform*
24 *background checks of applicants for employment, according to*
25 *current business practices.*

26 *(b) A background check equivalent to that performed by the*
27 *holder shall also be conducted on all of the following:*

28 *(1) Persons hired by a holder under a personal service*
29 *contract.*

30 *(2) Independent contractors and their employees.*

31 *(3) Vendors and their employees.*

32 *(c) Independent contractors and vendors shall certify that they*
33 *have obtained the background checks required pursuant to*
34 *subdivision (f), and shall make the background checks available*
35 *to the holder upon request.*

36 *(d) Except as otherwise provided by contract, the holder of a*
37 *state franchise shall not be responsible for administering the*
38 *background checks and shall not assume the costs of the*
39 *background checks of individuals who are not applicants for*
40 *employment of the holder.*

(e) (1) Subdivision (a) only applies to applicants for employment for positions that would allow the applicant to have direct contact with or access to the holder's network, central office, or customer premises, and perform activities that involve the installation, service, or repair of the holder's network or equipment.

(2) Subdivision (b) only applies to persons that have direct contact with or access to the holder's network, central office, or customer premises, and perform activities that involve the installation, service, or repair of the holder's network or equipment.

(f) This section does not apply to temporary workers performing emergency functions to restore the network of a holder to its normal state in the event of a natural disaster or an emergency that threatens or results in the loss of service.

~~53058.11.~~

5800.11. (a) A holder of a state franchise employing more than 750 total employees in California shall annually report to the department all of the following:

(1) The number of California residents employed by the holder, calculated on a full-time or full-time equivalent basis.

(2) The percentage of the holder's total domestic workforce, calculated on a full-time or full-time equivalent basis.

(3) The types and numbers of jobs by occupational classification held by residents of California employed by holders of state franchises and the average pay and benefits of those jobs and, separately, the number of out-of-state residents employed by independent contractors, companies, and consultants hired by the holder, calculated on a full-time or full-time equivalent basis, when the holder is not contractually prohibited from disclosing the information to the public. This paragraph applies only to those employees of an independent contractor, company, or consultant that are personally providing services to the holder, and does not apply to employees of an independent contractor, company, or consultant not personally performing services for the holder.

(4) The number of net new positions proposed to be created directly by the holder of a state franchise during the upcoming year by occupational classifications and by category of full-time, part-time, temporary, and contract employees.

(b) The department shall annually report the information required to be reported by holders of state franchises pursuant to subdivision (a), to the Assembly Committee on Utilities and Commerce and the Senate Committee on Energy, Utilities and Communications, or their successor committees, and within a reasonable time thereafter, shall make the information available to the public on its Internet Web site.

~~53058.12.~~

5800.12. (a) The provisions of this article are intended to be consistent with the federal Cable Act (47 U.S.C. Sec. 521 et seq.).

(b) Nothing in this section shall be interpreted to prevent a voice provider, cable operator or video service provider, or local entity from seeking clarification of its rights and obligations under federal law or from exercising any right or authority under federal or state law.

SEC. 2. Section 107.7 of the Revenue and Taxation Code is amended to read:

107.7. (a) When valuing possessory interests in real property created by the right to place wires, conduits, and appurtenances along or across public streets, rights-of-way, or public easements contained in a cable television franchise or license granted pursuant to Section 53058.3 or Section 53066 of the Government Code (a "cable television possessory interest"), the assessor shall value these possessory interests consistent with the requirements of Section 401. The methods of valuation shall include, but not be limited to, the comparable sales method, the income method (including, but not limited to, capitalizing rent), or the cost method.

(b) (1) The preferred method of valuation of a cable television possessory interest is capitalizing the annual rent, using an appropriate capitalization rate.

(2) For purposes of this section, the annual rent shall be that portion of that franchise fee ~~received by the franchising authority~~ that is determined to be payment for the cable television possessory interest for the actual remaining term or the reasonably anticipated term of the franchise or license or the appropriate economic rent. If the assessor does not use a portion of the franchise fee as the economic rent, the resulting

1 assessments shall not benefit from any presumption of
2 correctness.

3 (c) If the comparable sales method, which is not the preferred
4 method, is used by the assessor to value a cable television
5 possessory interest when sold in combination with other property
6 including, but not limited to, intangible assets or rights, the
7 resulting assessments shall not benefit from any presumption of
8 correctness.

9 (d) Intangible assets or rights of a cable television system are
10 not subject to ad valorem property taxation. These intangible
11 assets or rights, include, but are not limited to: franchises or
12 licenses to construct, operate, and maintain a cable television
13 system for a specified franchise term (excepting therefrom that
14 portion of the franchise or license which grants the possessory
15 interest), subscribers, marketing, and programming contracts,
16 nonreal property lease agreements, management and operating
17 systems, a workforce in place, going concern value, deferred,
18 startup, or prematurity costs, covenants not to compete, and
19 goodwill. However, a cable television possessory interest may be
20 assessed and valued by assuming the presence of intangible
21 assets or rights necessary to put the cable television possessory
22 interest to beneficial or productive use in an operating cable
23 television system.

24 (e) Whenever any change in ownership of a cable television
25 possessory interest occurs, the person or legal entity required to
26 file a statement pursuant to Section 480, 480.1, or 480.2, shall, at
27 the request of the assessor, provide as a part of that statement the
28 following, if applicable: confirmation of the sales price;
29 allocation of the sales price among the counties; and gross
30 revenue and franchise fee expenses of the cable television system
31 by county. Failure to provide this information shall result in a
32 penalty as provided in Section 482, except that the maximum
33 penalty shall be five thousand dollars (\$5,000).

34 SEC. 3. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the
39 penalty for a crime or infraction, within the meaning of Section
40 17556 of the Government Code, or changes the definition of a

1 crime within the meaning of Section 6 of Article XIII B of the
2 California Constitution.

3

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5 **CORRECTIONS:**

6 **Text — Pages 2, 13, 23, and 32.**

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